Executive Summary – Enforcement Matter – Case No. 48047 Western Refining Wholesale, Inc. dba C & R Fuel Control 51 RN102790995

Docket No. 2013-2203-PST-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

No

Location(s) Where Violation(s) Occurred:

C & R Fuel Control 51, 11201 Pellicano Drive, El Paso, El Paso County

Type of Operation:

Convenience store with retail sales of gasoline

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: May 16, 2014

Comments Received: No

Penalty Information

Total Penalty Assessed: \$16,751

Amount Deferred for Expedited Settlement: \$3,350 **Amount Deferred for Financial Inability to Pay:** \$0

Total Paid to General Revenue: \$13,401 **Total Due to General Revenue:** \$0

Payment Plan: N/A **SEP Conditional Offset:** \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - High

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

Executive Summary – Enforcement Matter – Case No. 48047 Western Refining Wholesale, Inc. dba C & R Fuel Control 51 RN102790995 Docket No. 2013-2203-PST-E

Investigation Information

Complaint Date(s): N/A **Complaint Information**: N/A

Date(s) of Investigation: October 29, 2013 Date(s) of NOE(s): December 13, 2013

Violation Information

- 1. Failed to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the underground storage tank (UST) system at least once every 60 days [30 Tex. Admin. Code § 334.42(i)].
- 2. Failed to provide corrosion protection to all underground metal components of the UST system which is designed or used to convey, contain, or store regulated substances. Specifically, the submersible sump pumps were in contact with the surrounding soil and were not protected from corrosion [30 Tex. Admin. Code § 334.49(a) and Tex. Water Code § 26.3475(d)].
- 3. Failed to test the corrosion protection system for performance and operability at a frequency of at least once every three years. Specifically, the triennial test was not conducted by the October 4, 2013 due date [30 Tex. Admin. Code § 334.49(c)(4) and Tex. Water Code § 26.3475(d)].
- 4. Failed to report a suspected release of a regulated substance to the TCEQ within 24 hours of discovery. Specifically, the monthly inventory control records for July and August 2013 indicated a suspected release that was not reported [30 Tex. Admin. Code § 334.72].
- 5. Failed to investigate a suspected release within 30 days of discovery. Specifically, the monthly inventory control records for July and August 2013 indicated a suspected release that was not investigated [30 Tex. Admin. Code § 334.74].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent has implemented the following:

- a. Removed the surrounding soil on sumps 1 and 2 and began conducting bimonthly inspections of the cathodic protection system on December 6, 2013;
- b. Successfully conducted the triennial testing of the corrosion protection system on November 20, 2013; and
- c. Established and implemented procedures to report a suspected release on December 12, 2013.

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Docket No. 2013-2203-PST-E

Technical Requirements:

The Order will require the Respondent to:

- a. Within 30 days, conduct an investigation of the suspected release and implement appropriate corrective measures; and
- b. Within 45 days, submit written certification demonstrating compliance with Ordering Provision a.

Litigation Information

Date Petition(s) Filed: N/A Date Answer(s) Filed: N/A **SOAH Referral Date:** N/A Hearing Date(s): N/A **Settlement Date: N/A**

Contact Information

TCEQ Attorney: N/A

TCEO Enforcement Coordinator: John Fennell, Enforcement Division,

Enforcement Team 7, MC 128, (512) 239-2616; Candy Garrett, Enforcement Division,

MC 219, (512) 239-1456

TCEQ SEP Coordinator: N/A

Respondent: Leslie A. Allen, Vice President, Environmental and Regulatory Affairs. Western Refining Wholesale, Inc. dba C & R Fuel Control 51, 1250 West Washington

Street, Suite 101, Tempe, Arizona 85281

Kevin F. Goode, Vice President, Wholesale, Western Refining Wholesale, Inc. dba C & R

Fuel Control 51, 1250 West Washington Street, Suite 101, Tempe, Arizona 85281

Respondent's Attorney: N/A



Parties Control Contro	Penalty Calculation Worksheet	(PCW)
Policy Revision 3 (5	·	PCW Revision August 3, 2011
TCEQ		
DATES Assigned PCW		- In the second
	27 11di 2014 Sci cennig 17 Sec 2015 21 A Sec	
RESPONDENT/FACIL		and the second s
	Western Refining Wholesale, Inc. dba C & R Fuel Control 51	
Reg. Ent. Ref. No. Facility/Site Region		Source Minor
	1	
CASE INFORMATION		
Enf./Case ID No.		er Type 1660
	Petroleum Storage Tank Government/Nor	
Multi-Media	Enf. Coor	dinator John Fennell
		s Team Enforcement Team 7
Admin. Penalty \$	Limit Minimum \$0 Maximum \$25,000	na na ananana
	Danalty Calculation Costion	
	Penalty Calculation Section	
TOTAL BASE PENA	ALTY (Sum of violation base penalties)	Subtotal 1 \$17,500
ADDICTMENTS (4	/-) TO SUBTOTAL 1	
Subtotals 2-7 are o	btained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percenta	
Compliance H	istory 0.0% Enhancement	Subtotals 2, 3, & 7 \$0
Notos	No adjustment for compliance history.	
Notes	No adjustment for compliance instary.	
Colombility	No 0.0% Enhancement	Subtotal 4 \$0
Culpability	No 0.0% Enhancement	30010187
Notes	The Respondent does not meet the culpability criteria.	
Good Faith Eff	ort to Comply Total Adjustments	Subtotal 5 -\$1,561
good raidi En	ore to comply rotal Aujustinants	
		Subtotal 6 \$0
Economic Ben	efit 0.0% Enhancement* Total EB Amounts \$1,019 **Capped at the Total EB \$ Amount	
Approx	Cost of Compliance \$7,300	
CUM OF CURTOTA	104.7	Final Subtotal \$15,939
SUM OF SUBTOTA	LS 1-7	Filial Subtotal \$\frac{\pi 25/333}{25/333}
OTHER FACTORS	AS JUSTICE MAY REQUIRE 5.1%	Adjustment \$812
	Subtotal by the indicated percentage.	
	Recommended enhancement to capture the avoided cost of comp	bliance
Notes	associated with Violation Nos. 1, 2, and 3.	
	Fi.	nal Penalty Amount \$16,751
	•	
STATUTORY LIMI	T ADJUSTMENT Fin.	al Assessed Penalty \$16,751
	The second s	
DEFERRAL		action Adjustment -\$3,350
Keduces the Final Assessed Pe	enalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.	
Notes	Deferral offered for expedited settlement.	

PAYABLE PENALTY

\$13,401

Screening Date 17-Dec-2013

Docket No. 2013-2203-PST-E

Policy Revision 3 (September 2011) PCW Revision August 3, 2011

Case ID No. 48047

Reg. Ent. Reference No. RN102790995

Media [Statute] Petroleum Storage Tank

Respondent Western Refining Wholesale, Inc. dba C & R Fuel +

Enf. Coordinator John Fennell

Orders Judgments and Consent Decrees	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria) Other written NOVs Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria) Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria) Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state	0 0 0	0% 0% 0%
Judgments nd Consent	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria) Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria) Any adjudicated final court judgments and default judgments, or non-adjudicated	0	0%
Judgments nd Consent	orders meeting criteria) Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria) Any adjudicated final court judgments and default judgments, or non-adjudicated	0	0%
Judgments nd Consent	without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria) Any adjudicated final court judgments and default judgments, or non-adjudicated		
nd Consent	of liability of this state or the federal government (number of judgments or consent decrees meeting criteria) Any adjudicated final court judgments and default judgments, or non-adjudicated	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated		
	or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audita	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
Addits	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
		ase Enter Yes or No	
	Environmental management systems in place for one year or more	No	0%
Other	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
Other	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%
	Adjustment Pero	centage (Sub	total 2)
t Violator (Subtotal 3) See Substitution of the Substi		
No	Adjustment Per	centage (Sub	total 3) 🔃
iance Histo			·
Satisfactory F	Performer Adjustment Perc	centage (Sub	total 7)
iance Histo	ry Summary ()		
ompliance History Notes	No adjustment for compliance history.		
	Audits Other t Violator (Sociance History Filance History Notes	Chronic excessive emissions events (number of events) Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted) Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed) Plee Environmental management systems in place for one year or more Voluntary on-site compliance assessments conducted by the executive director under a special assistance program Participation in a voluntary pollution reduction program Early compliance with, or offer of a product that meets future state or federal government environmental requirements Adjustment Per t Violator (Subtotal 3) No Adjustment Per inance History Person Classification (Subtotal 7) Satisfactory Performer Adjustment Per inance History Summary No adjustment for compliance history. No adjustment Percentage (Sampliance History Adjustment Pe	Chronic excessive emissions events (number of events) Audits Audits

Case ID No. Reg. Ent. Reference No.	Western Refining Wholesale, Inc. dba C & R Fuel Control 51 48047 RN102790995 Petroleum Storage Tank John Fennell	PCW on 3 (September 2011) evision August 3, 2011
Rule Cite(s)	30 Tex. Admin. Code § 334.42(i)	
Violation Description	Failed to inspect all sumps including dispenser sumps, manways, overspill containers, or catchment basins associated with the underground storage tank ("UST") system at least once every 60 days.	
	Base Penalty	\$25,000
	rty and Human Health Matrix Harm	
Release OR Actual Potential		
>>Programmatic Matrix	x x x x x x x x x x x x x x x x x x x	
Falsification	Major Moderate Minor Percent 0.0%	
Matrix B	th or the environment will or could be exposed to significant amounts of pollutants not exceed levels that are protective of human health or environmental receptors as a result of the violation.	
	Adjustment \$23,750	
Violation Events		\$1,250
Number of \	Violation Events 1 38 Number of violation days	
mark only one with an x	daily weekly monthly quarterly semiannual annual single event	\$1,250
One quarterly	event is recommended based on documentation of the violation during the October 29, 2013 investigation to the December 6, 2013 compliance date.	
Good Faith Efforts to Com	Extraordinary Ordinary N/A The Respondent came into compliance on December 6, 2013, prior to the December 13, 2013 Notice of Enforcement ("NOE").	\$312
	Violation Subtotal	\$938
Economic Benefit (EB) for Estimate	this violation Statutory Limit Test ed EB Amount \$106 Violation Final Penalty Total	\$986
	This violation Final Assessed Penalty (adjusted for limits)	\$986

Economic Benefit Worksheet

Respondent Western Refining Wholesale, Inc. dba C & R Fuel Control 51 Case ID No. 48047 Reg. Ent. Reference No. RN102790995 Percent Interest Depreciation Media Petroleum Storage Tank Violation No. 1 5.0 Item Cost Date Required Final Date Yrs Interest Saved Onetime Costs **EB** Amount Item Description No commas or \$ **Delayed Costs** 0.00 \$0 Equipment \$0 \$0 Buildings 0.00 \$0 \$0 \$0 Other (as needed) 0.00 \$0 \$0 \$0 Engineering/Construction 0.00 \$0 \$0 \$0 \$0 0.00 n/a Land \$0 Record Keeping System 0.00 n/a \$0 \$0 n/a Training/Sampling 0.00 \$0 \$0 \$0 Remediation/Disposal 0.00 n/a \$0 \$0 **Permit Costs** 0.00 n/a 0.00 Other (as needed) n/a \$0 Notes for DELAYED costs Avoided Costs

Disposal ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs) Personnel Inspection/Reporting/Sampling Supplies/Equipment

Financial Assurance [2] ONE-TIME avoided costs [3] Other (as needed)

WILLIAM WE	ama [a] aronoo	COULD DOILOR		(
	1		0.00	\$0	\$0	\$0
			0.00	\$0	\$0	\$0
			0.00	\$0	\$0	\$0
			0.00	\$0	\$0	\$0
			0.00	\$0	\$0	\$0
\$100	30-Aug-2013	6-Dec-2013	1.19	\$6	\$100	\$106
			0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct bimonthly inspections of the sumps, manways, overfill containers, or catchment basins. The Date Required is 60 days before the investigation. The Final Date is the compliance date.

Approx. Cost of Compliance	\$100	TOTAL	\$106

Respondent Western Refining Windessle, Inc. dba C & R Fuel Control 51 ACM Resiston August 3. 2011 Reg. Ent. Reference No. RN 102790995 Media (Statute) Perdeum Storage Tank Enf. Coordinator Windian Number Rule CRef et Inc. Coordinator Violation Number Violation Description Description Description Violation Description	PCW		Screening Date
Reg. Ent. Reference No. RI102799995 Medic [Statute] Petroleum Storage Fank Enf. Coordinator John Fennel Violation Number Rule Cite(s) Falled to provide correson protection to all underground metal components of the UST system which is designed on used to convey, contain, or storac regulated Surrounding soil and were not protected from correson. Also, failed to test the corrosion protection system for performance and operability at a frequency of at least once every three years. Specifically, the triennal test was not conducted by the October 4, 2013 the date. Base Penalty 525,000. >> Environmental, Property and Human Health Matrix. Harm Release Major Moderate Minor Falsification Major Moderate Minor Percent 15.0% >> Programmatic Matrix Rotes Marrix Rotes Marrix Rotes Number of Violation Events Number of Violation Events One quarterly event is recommended based on documentation of the violation days One quarterly event is recommended based on documentation of the violation during the October 29, 2013 investigation to the December 6, 2013 compliance date. Good Faith Efforts to Combby Extraordinary Ordinary For this violation False recommended based on documentation of the violation during the October 29, 2013 investigation to the December 6, 2013 compliance date. For the Respondent dame into compliance on December 6, 2013, prior to the December 13, 2013 NOE. For this violation Subtotal For this v			
Finf. Coordinator John Fennel Violation Number Rule Cite(s) 30 Tex. Admin. Code § 334-49(a) and (c)(4) and Tex. Water Code § 26.3475(d) Failed to provide corroson protection to all underground metal components of the UST system which is designed on used to convey, contain, or store regulated substances. Specifically, the submersible ownp pumps were in certact with the corroson protection system for performance and provided by Violation Description Violation Description False Penalty 925,000 Servironmental, Property and Human Health Matrix Heast Marin Release Raper Moderate Minor OR Release Raper Moderate Minor Percent 0.0% **Programmatic Matrix Falsification Major Moderate Minor Percent 0.0% **Notes** **Notes** **Adjustroent** **Salification Major Moderate Minor Percent 0.0% **Adjustroent** **Salification Major Moderate Minor **Percent 0.0% **Adjustroent** **Adjustroent** **Salification Major Moderate Minor **One quarterly event is recommended based on documentation of the violation during the October 29, 2013 investigation to the December 6, 2013 compliance date. **One quarterly event is recommended based on documentation of the violation during the October 29, 2013 investigation to the December 6, 2013 compliance date. **The Respondent came into compliance on December 6, 2013, prior to the December 13, 2013 905. **Violation Subtotal 52, 2013 Moderate Minor			
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Name		rty and Human Health Matrix	>> Environmental. Proper
Percent 15.0% >> Programmatic Matrix Falsification Major Moderate Minor Percent 0.0% Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation. Adjustment \$21,250 \$3,750		Harm	
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Violation Subtotal \$2,813 Economic Benefit (EB) for this violation Statutory Limit Test Estimated EB Amount \$610 Violation Final Penalty Total \$2,956			
Violation Subtotal \$2,813 Economic Benefit (EB) for this violation Statutory Limit Test Estimated EB Amount \$610 Violation Final Penalty Total \$2,956		The Respondent came into compliance on December 6.	
Economic Benefit (EB) for this violation Statutory Limit Test Estimated EB Amount \$610 Violation Final Penalty Total \$2,956		Notocii	
Economic Benefit (EB) for this violation Statutory Limit Test Estimated EB Amount \$610 Violation Final Penalty Total \$2,956	£2 Q12	Violation Subtotal	
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This violation Final Assessed Penalty (adjusted for limits) \$2,956	\$2,956	ed EB Amount \$610 Violation Final Penalty Total	Estimate
	\$2,956	This violation Final Assessed Penalty (adjusted for limits)	

		conomic		000000000000000000000000000000000000000			
kespondent Case ID No.		ing Wholesale, Inc	c. aba C & R Fu	el Cont	roi 51		
Case ID No. Rea. Ent. Reference No.							
	Petroleum Sto	rage rank				Percent Interest	Years of
Violation No.	2						Depreciation
						5.0	15
<u>.</u>		Date Required	Final Date	YFS	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or \$						
Delayed Costs							
Equipment	\$1,500	1 29-Oct-2013	6-Dec-2013	0.10	\$1	S10	\$11
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$ 0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	l n/a	\$0
Notes for DELAYED costs Avoided Costs	Th	ne Date Required i	is the investigat	on dat	e. The Final Date	the corrosion prote is the compliance d for one-time avoid	ete.
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
spection/Reporting/Sampling			27 (200 2 70) 2 70 2 70 70 70 70 70 70 70 70 70 70 70 70 70	0.00	<u>\$0</u>	\$0	\$0
Supplies/Equipment	L	JL		0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$500	29-Oct-2010	20-Nov-2013	3.98	\$100	\$500	\$600
- - 1				3.98 0.00	\$100 \$0	\$500 \$0	\$600 \$0
ONE-TIME avoided costs [3]		oided cost for con	npleting the trie	3.98 0.00 nnial te	\$100 \$0	\$500 \$0 Required is three year	\$600 \$0

	ening Date Respondent		g Wholesale, Inc.		No. 2013-2203-P9 Control 51		PCW 3 (September 2011)
Reg. Ent. Ref	Case ID No. ference No.	48047				PCW Revi	sion August 3, 2011
Enf. C	Coordinator		.go ram				
Viol	ation Number	3					
	Rule Cite(s)		30 Te	x. Admin. Code	§ 334.72		
Violatio	n Description	hours of discov	ery. Specifically,	the monthly inv	d substance to the ventory control reco ase that was not re	rds for July and	
						Base Penalty	\$25,000
>> Environme	ntal, Properi	ty and Huma	ın Health Ma Harm	trix			
	Release	Major		Minor			
OR	Actual				Dorsont -	0.00/	
	Potential				Percent	0.0%	
>>Programma							
	Falsification	Major x	Moderate I	Minor	Percent	5.0%	
	L					<u> </u>	
Matrix							
Notes		100	% of the rule red	quirement was n	ot met.		
					Adjustment	\$23,750	
							\$1,250
Violation Event	s						
	Number of Vi	olation Events	1	96	Number of vio	lation days	
		daily weekly					
		monthly					
	mark only one with an x	quarterly			Violatio	n Base Penalty	\$1,250
		semiannual annual	-				
		single event	×				
	•						
			One single even	t is recommende	ed.		
			One shight even				
		*					\$312
Good Faith Effo	rts to Comp	ıy	25.0% Redi	uction to EDPRP/Settlemer	nt Offer	ladaa/waagaadaadaadaadaadaadaadaadaadaadaadaada	\$312
	E	Extraordinary					! !
		Ordinary	×				
		N/A _	(marl	(with x)			
		Notes			iance on December	12,	
			2013, prior	to the December	en 13, 2013 NOE.		
		S. Santa			Viol	ation Subtotal	\$938
							7239
Economic Benef	fit (EB) for t	his violation	kesa mi saidki	en 10 fector interior literati	Statutory I	imit Test	
	Estimated	d EB Amount		\$107	Violation Final	Penalty Total	\$986
		<u></u>	This violatio	n Final Accord	ed Penalty (adjus	ted for limits)	\$986
			inis violatio	, mai A33635			7330

Economic Benefit Worksheet

Respondent Western Refining Wholesale, Inc. dba C & R Fuel Control 51 Case ID No. 48047 Reg. Ent. Reference No. RN102790995 Media Petroleum Storage Tank Percent Interest Depreciation Years of Violation No. 3 5.0 15 Item Cost Date Required Final Date Yrs Interest Saved Onetime Costs **EB** Amount Item Description No commas or \$ **Delayed Costs** Equipment 0.00 \$0 \$0 \$0 0.00 \$0 \$0 \$0 Other (as needed) 0.00 \$0 \$0 \$0 Engineering/Construction 0.00 \$0 \$0 \$0 0.00 \$0 \$0 n/a Land \$0 \$1 Record Keeping System 0.00 \$0 n/a \$100 29-Oct-2013 12-Dec-2013 Training/Sampling 0.12 n/a \$1 Remediation/Disposal 0.00 \$0 n/a \$0 **Permit Costs** 0.00 \$0 n/a \$0 Other (as needed) 0.00 n/a Estimated delayed cost to establish and implement procedures for reporting suspected releases. The Date Notes for DELAYED costs Required is the investigation date. The Final Date is the compliance date. ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs) **Avoided Costs** 0.00 Disposal 0.00 \$0 \$0 Personnel \$0 \$0 Inspection/Reporting/Sampling 0.00 \$0 <u>\$0</u> \$0 0.00 \$0 \$0 Supplies/Equipment 0.00 \$0 \$0 \$0

Financial Assurance [2] ONE-TIME avoided costs [3] Other (as needed)

Notes for AVOIDED costs

\$100

Estimated avoided cost to report a suspected release. The Date Required is the date of the suspected release. The Final Date is the compliance date.

\$6

\$100

\$0

\$106

1.20

TOTAL \$107 \$200 Approx. Cost of Compliance

Respond Case ID Reg. Ent. Reference Media [Statu Enf. Coordina Violation Num	No. 48047 No. RN102790995 te] Petroleum Stor tor John Fennell ber 4	Docket No. 2013-2203-PST-E ng Wholesale, Inc. dba C & R Fuel Control 51 age Tank	PCW Policy Revision 3 (September 2011) PCW Revision August 3, 2011
Rule Cite	e(s)	30 Tex. Admin. Code § 334.74	
Violation Descrip	discovery. S	stigate a suspected release of regulated substance within 30 pecifically, the monthly inventory control records for July and 3 indicated a suspected release that was not investigated.	
		Base	e Penalty \$25,000
>> Environmental, Pro	perty and Hum	an Health Matrix	
Rele OR Ac	tual	Harm Moderate Minor Percent 15.0%	
	Una and a second	Total State of the Control of the Co	
>> Programmatic Matri Falsificat		Moderate Minor	
		Percent 0.0%	i i
Matrix Notes that a	alth or the environr re protective of hun	nent will or could be exposed to pollutants which would exce an health or environmental receptors as a result of the viol	eed levels ation.
		Adjustment	\$21,250
Violation Events			\$3,750
Number	of Violation Events	3 77 Number of violation of	days
mark only o with an x		X Violation Base	e Penalty \$11,250
Three mo		commended from the October 1, 2013 release investigation the December 17, 2013 screening date.	due date
Good Faith Efforts to Co	Extraordinary Ordinary N/A	0.0% Reduction Before NOV NOV to EDPRP/Settlement Offer X (mark with x)	\$0
	Notes	The Respondent does not meet the good faith criteria for this violation.	
		Violation	Subtotal \$11,250
Economic Benefit (EB)	or this violatio	n Statutory Limit	Test
	nated EB Amount	\$196 Violation Final Pena	lty Total \$11,823
	•	This violation Final Assessed Penalty (adjusted fo	or limits) \$11,823

Economic Benefit Worksheet

eg. Ent. Reference No. Media Violation No.	Petroleum Sto					Percent Interest	Years of Depreciation
						5.0	15
	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or \$						
Delayed Costs							
Equipment		T		0.00	\$0	\$0	\$0.
Buildings		1		0.00	\$0	\$0	\$0
Other (as needed)		i		0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	. \$0
Remediation/Disposal			. 1	0.00	\$0	n/a	\$0
					**************************************		***************************************
Permit Costs	1			0.00	\$0	n/a l	\$0
Permit Costs Other (as needed)				0.78 ase an	\$196 d implement appro	n/a opriate corrective m	\$196 easures. The
Other (as needed) Notes for DELAYED costs Avoided Costs Disposal Personnel Pection/Reporting/Sampling Supplies/Equipment Financial Assurance [2]	Estimated co Date Requir	st to investigate a ed is the release i	i suspected rele nvestigation du	0.78 ase an e date. enterir 0.00 0.00 0.00 0.00 0.00	\$196 d implement approximate is the Final Date is so	n/a opriate corrective m s the estimated com for one-time avoid \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0	\$196 easures. The pliance date. led costs) \$0 \$0 \$0 \$0 \$0 \$0 \$0
Other (as needed) Notes for DELAYED costs Avoided Costs Disposal Personnel Pection/Reporting/Sampling Supplies/Equipment Financial Assurance [2]	Estimated co Date Requir	st to investigate a ed is the release i	i suspected rele nvestigation du	0.78 ase an e date. enterir 0.00 0.00 0.00 0.00 0.00	\$196 d implement appro The Final Date is g item (except to so \$0 \$0 \$0 \$0 \$0 \$0	n/a opriate corrective m the estimated com for one-time avoid \$0 \$0 \$0 \$0 \$0 \$0 \$0	\$196 easures. The pliance date. led costs) \$0 \$0 \$0 \$0 \$0 \$0
Other (as needed) Notes for DELAYED costs Avoided Costs Disposal Personnel Pection/Reporting/Sampling Supplies/Equipment Financial Assurance [2] ONE-TIME avoided costs [3]	Estimated co Date Requir	st to investigate a ed is the release i	i suspected rele nvestigation du	0.78 ase an e date. enterir 0.00 0.00 0.00 0.00 0.00	\$196 d implement approximate is the Final Date is so	n/a opriate corrective m s the estimated com for one-time avoid \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0	\$196 easures. The pliance date. led costs) \$0 \$0 \$0 \$0 \$0 \$0 \$0
Other (as needed) Notes for DELAYED costs Avoided Costs Disposal Personnel Dection/Reporting/Sampling Supplies/Equipment Financial Assurance [2] ONE-TIME avoided costs [3]	Estimated co Date Requir	st to investigate a ed is the release i	i suspected rele nvestigation du	0.78 ase an e date. enterir 0.00 0.00 0.00 0.00 0.00	\$196 d implement approximate is the Final Date is so	n/a opriate corrective m s the estimated com for one-time avoid \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0	\$196 easures. The pliance date. led costs) \$0 \$0 \$0 \$0 \$0 \$0 \$0

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

PUBLISHED Compliance History Report for CN603421876, RN102790995, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, CN603421876, Western Refining

Classification: SATISFACTORY

Rating: 0.69

or Owner/Operator:

Wholesale, Inc.

Rating: 0.00

Regulated Entity:

RN102790995, C & R FUEL CONTROL 51 Classification: HIGH

Repeat Violator: NO

Complexity Points:

CH Group:

01 - Gas Stations with convenience Stores and other Gas Stations

Location:

11201 PELLICANO DR EL PASO, TX 79935-5303, EL PASO COUNTY

TCEQ Region:

REGION 06 - EL PASO

ID Number(s): AIR NEW SOURCE PERMITS ACCOUNT NUMBER EE0886N

PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 19718

Compliance History Period: September 01, 2008 to August 31, 2013

Rating Year: 2013

Rating Date: 09/01/2013

Date Compliance History Report Prepared: December 17, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: December 17, 2008 to December 17, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Judy Kluge

Phone: (817) 588-5825

Site and Owner/Operator History:

1) Has the site been in existence and/or operation for the full five year compliance period?

YES NO

2) Has there been a (known) change in ownership/operator of the site during the compliance period?

3) If **YES** for #2, who is the current owner/operator?

N/A

4) If YES for #2, who was/were the prior

N/A

owner(s)/operator(s)?

5) If **YES**, when did the change(s) in owner or operator N/A

occur?

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

item i	September 16, 2010	(663333)
Item 2	February 10, 2011	(895220)
Item 3	March 15, 2011	(905357)
Item 4	July 28, 2011	(942219)
Item 5	December 05, 2011	(970218)
Item 6	August 15, 2012	(1027275)
Item 7	January 29, 2013	(1054422)
Item 8	August 12, 2013	(1103314)

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

Texas Commission on Environmental Quality



§	BEFORE THE
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AGREED ORDER DOCKET NO. 2013-2203-PST-E

I. JURISDICTION AND STIPULATIONS

On _______, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Western Refining Wholesale, Inc. dba C & R Fuel Control 51 ("Respondent") under the authority of Tex. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

- 1. The Respondent operates a convenience store with retail sales of gasoline at 11201 Pellicano Drive in El Paso, El Paso County, Texas (the "Facility").
- 2. The Respondent's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
- 3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
- 4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about December 18, 2013.
- 5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
- 6. An administrative penalty in the amount of Sixteen Thousand Seven Hundred Fifty-One Dollars (\$16,751) is assessed by the Commission in settlement of the violations alleged in

Section II ("Allegations"). The Respondent has paid Thirteen Thousand Four Hundred One Dollars (\$13,401) of the administrative penalty and Three Thousand Three Hundred Fifty Dollars (\$3,350) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

- 7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
- 8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 Tex. ADMIN. CODE § 70.10(a).
- 9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. Removed the surrounding soil on sumps 1 and 2 and began conducting bimonthly inspections of the cathodic protection system on December 6, 2013;
 - b. Successfully conducted the triennial testing of the corrosion protection system on November 20, 2013; and
 - c. Established and implemented procedures to report a suspected release on December 12, 2013.
- 10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
- This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
- 12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As operator of the Facility, the Respondent is alleged to have:

1. Failed to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days, in violation of 30 Tex. ADMIN. CODE § 334.42(i), as documented during an investigation conducted on October 29, 2013.

Western Refining Wholesale, Inc. dba C & R Fuel Control 51 DOCKET NO. 2013-2203-PST-E Page 3

- 2. Failed to provide corrosion protection to all underground metal components of the UST system which is designed or used to convey, contain, or store regulated substances, in violation of 30 Tex. Admin. Code § 334.49(a) and Tex. Water Code § 26.3475(d), as documented during an investigation conducted on October 29, 2013. Specifically, the submersible sump pumps were in contact with the surrounding soil and were not protected from corrosion.
- Failed to test the corrosion protection system for performance and operability at a frequency of at least once every three years, in violation of 30 Tex. ADMIN. CODE § 334.49(c)(4) and Tex. Water Code § 26.3475(d), as documented during an investigation conducted on October 29, 2013. Specifically, the triennial test was not conducted by the October 4, 2013 due date.
- 4. Failed to report a suspected release of a regulated substance to the TCEQ within 24 hours of discovery, in violation of 30 Tex. Admin. Code § 334.72, as documented during an investigation conducted on October 29, 2013. Specifically, the monthly inventory control records for July and August 2013 indicated a suspected release that was not reported.
- 5. Failed to investigate a suspected release within 30 days of discovery, in violation of 30 Tex. Admin. Code § 334.74, as documented during an investigation conducted on October 29, 2013. Specifically, the monthly inventory control records for July and August 2013 indicated a suspected release that was not investigated.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Western Refining Wholesale, Inc. dba C & R Fuel Control 51, Docket No. 2013-2203-PST-E" to:

Financial Administration Division, Revenue Operations Section Attention: Cashier's Office, MC 214 Texas Commission on Environmental Quality P.O. Box 13088 Austin, Texas 78711-3088 Western Refining Wholesale, Inc. dba C & R Fuel Control 51 DOCKET NO. 2013-2203-PST-E Page 4

- 2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, conduct an investigation of the suspected release and implement appropriate corrective measures, in accordance with 30 TEX. ADMIN. CODE § 334.74; and
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team Enforcement Division, MC 149A Texas Commission on Environmental Quality P.O. Box 13087 Austin, Texas 78711-3087

with a copy to:

Waste Section Manager El Paso Regional Office Texas Commission on Environmental Quality 401 E. Franklin Ave, Suite 560 El Paso TX 79901-1212

- 3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
- 4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

Western Refining Wholesale, Inc. dba C & R Fuel Control 51 DOCKET NO. 2013-2203-PST-E Page 5

- 5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
- 6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
- This Agreed Order may be executed in separate and multiple counterparts, which 7. together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
- 8. Under 30 Tex. Admin. Code § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

Western Refining Wholesale, Inc. dba C & R Fuel Control 51 DOCKET NO. 2013-2203-PST-E Page 6

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Permy Yours T For the Executive Director	717114 Date
I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.	
I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in: A negative impact on compliance history; Greater scrutiny of any permit applications submitted; Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency; Increased penalties in any future enforcement actions; Automatic referral to the Attorney General's Office of any future enforcement actions; and TCEQ seeking other relief as authorized by law. In addition, any falsification of any compliance documents may result in criminal prosecution.	
Kevin 7 Howden Signature	4-17-14 Date
Kevin F G-oode Name (Printed or typed) Authorized Representative of Western Refining Wholesale, Inc. dba C & R Fuel Cont	VP Wholesale Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.